



PTO/SB/33 (07-05)

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| PRE-APPEAL BRIEF REQUEST FOR REVIEW | |
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| Docket Number (Optional) 089229.00048 | |
| I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on _____ | Application Number: 10/524,055 |
| Signature _____ | Filed: March 9, 2005 First Named Inventor: |
| Typed or printed Name _____ | Juha-Pekka KOSKINEN, et al. Art Unit: 2617 |
| | Examiner: Olumide Ajibade Akonai |

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a Notice of Appeal.

The review is requested for the reasons stated on the attached sheets.

Note: No more than five (5) pages may be provided.

I am the

- Applicant/Inventor.
 assignee of record of the entire interest.
See 37 CFR 3.71. Statement under
37 CFR 3.73(b) is enclosed
 Attorney or agent of record.
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- Attorney or agent acting under 37 CFR 1.34.
Reg. No. is acting under 37 CFR 1.34 _____

April 7, 2008

Date

NOTE: Signatures of all of the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

- *Total of _____ forms are submitted.



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of:
Juha-Pekka KOSKINEN et al.
Application No.: 10/524,055
Filed: March 9, 2005

Confirmation No.: 4444
Art Unit: 2617
Examiner: Olumide Ajibade Akonai
Attorney Dkt. No.: 089229.00048

For: CHARGING FOR AN IP BASED COMMUNICATION SYSTEM

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

April 7, 2008

Sir:

In accordance with the Pre-Appeal Brief Conference Pilot Program guidelines set forth in the Official Gazette Notice of July 12, 2005, Applicants hereby submit this Pre-Appeal Brief Request for Review of the final rejections of claims 1-28, which are slightly more than all the claims pending in the above identified application. Claims 1-28 were finally rejected in the Office Action dated October 5, 2007. Applicants filed a Response to the Final Office Action on March 12, 2008, and the Office did not issue an Advisory Action before April 5, 2008, the date six-months from the mail date of the Office Action. Applicants hereby appeal these rejections and submit this Pre-Appeal Brief Request for Review.

The identification of claims 2 and 15 as rejected on the summary sheet is clearly erroneous, as claims 2 and 15 were previously cancelled without prejudice, and consequently are no longer pending.

Claims 1, 3-7, 12-14, 16-23, and 27 were rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,999,449 of Barna et al. ("Barna"). Applicants respectfully submit that this rejection includes clear errors.

Barna generally relates to a system and method of monitoring and reporting accounting data based on volume. Figure 1 of Barna is a signaling diagram that illustrates the flow of messages between access and accounting nodes and in IP network when implementing a method of accounting based on the expiry of a predetermined volume of data transferred using the stop record trigger.

Referring to Figure 1 of Barna, the Office Action took the position that access server PDSN 12 corresponds to the claimed “network element,” that accounting server 18 corresponds to the claimed “charging function,” and that IP Network or Internet 13 corresponds to the claimed “internet protocol based communication system.” The Office Action took the position that access server PDSN 12 is a gateway of IP Network Internet 13.

Clear Error 1 – Cited Response Message is not an Initiation Message

Claim 1 recites, in part, “initiating a change in the accounting session on the initiation of the charging function.” Barna fails to disclose or suggest at least this feature of claim 1.

The Office Action took the position that this feature is disclosed by “accounting response, step 41.” Applicants respectfully disagree with the Office Action’s position.

Accounting response, step 41, clearly is the Accounting Server 18 responding to the Access Server (PDSN) 12, specifically to accounting request stop, step 36. Thus, accounting response, step 41, is evidently a response, not an initiation of a change in the accounting session by a charging function. Thus, Barna fails to disclose or suggest the claimed “initiating a change in the accounting session on the initiation of the charging function,” as recited in claim 1.

Clear Error 2 – Cited Response Message is not a Request to Update

Claim 1 also recites, in part, “wherein the initiating a change in the accounting session comprises transmitting a request to update the accounting session from the charging function to the network element.” Barna also fails to disclose or suggest at least this feature of claim 1.

The Office Action took the position that this feature is disclosed by Barna at step 41. However, as noted above, step 41 is not “a request to update the accounting session,” it is a response to a request from the Access Server (PDSN) 12, specifically the accounting request stop message sent at step 36.

Accordingly, Barna also fails to disclose or suggest “wherein the initiating a change in the accounting session comprises transmitting a request to update the accounting session from the charging function to the network element,” as recited in claim 1. Applicants respectfully request, therefore, that the rejection of claim 1 be withdrawn.

In the Response to Arguments section, the Office Action took the position that “Messages 41 and 42 … broadly read on claimed limitations ‘initiating a change in the accounting session on the initiation of a charging function’ and ‘wherein the initiating a change in the accounting

session comprises transmitting a request to update the accounting session from the charging session to the network element’ respectively.” This position is inherently self-contradictory, and consequently clearly erroneous.

If message 41 corresponds to the claimed “initiating a change” feature, and message 42 corresponds to “transmitting a request” (as indicated in the “Response to Arguments” section) then it is immediately apparent that message 41 does not “comprise” message 42. Accordingly, the claim limitation “wherein the initiating a change in the accounting session comprises transmitting a request to update the accounting session from the charging function to the network element,” as recited in claim 1, cannot possibly be disclosed as asserted in the Office Action.

Furthermore, the Office Action has failed to clearly identify the relevant features of the claim. As noted above, claim 1 recites: “initiating a change in the accounting session on the initiation of the charging function.” The Office Action stated that “Barna discloses the PDSN beginning a new accounting session with the accounting server.” According to the detailed rejection, the accounting server corresponds to the claimed “charging function.” If, as the Office Action stated, the PDSN begins (which presumably is intended to mean “initiates”) the session, then this is not “on the initiation of the charging function.” Furthermore, “a new accounting session” is clearly not “a change in the accounting session.”

Furthermore, the Office Action stated that “The accounting start message 42 transmitted from the PDSN to the accounting server to begin a new accounting session is in response to [an] accounting message received from the [] accounting server AAA 14.” That account is an incorrect characterization of Barna’s disclosure.

As can be seen from Figure 1 of Barna, there is a connection request 21, which is followed by an initial access process (messages 22-27). Next, there is an accounting request start process (messages 28-32), and then a period of time for which accounting remains as is (messages 34-35). After that, on initiation of the PDSN, there is an accounting request stop process (messages 36-41). Next, again on initiation of the PDSN, there is a second accounting request start process (messages 42-45), and a period of time for which accounting remains as is (message 46). Finally, there is (again at the initiation of the PDSN, a second accounting request stop process (messages 47-52), after which the connection is ended.

In short, it can be seen that Figure 1 of Barna in now way suggests that any change in any of the accounting sessions is initiated by the “Accounting Server 18” (or any of its component elements 14, 15, 16, or 17). In each case, any changing in accounting status is either to start a session or stop a session. Furthermore, each of those “starts” and “stops” is initiated by the PDSN not the accounting server. Accordingly, it can be seen that, contrary to the Office Action’s position, Barna fails to disclose or suggest both “initiating a change in the accounting session on the initiation of the charging function,” and “wherein the initiating a change in the accounting session comprises transmitting a request to update the accounting session from the charging function to the network element,” as recited in claim 1. Thus, the rejection should be withdrawn, and its timely withdrawal is respectfully requested.

The rejections of the other independent claims and dependent claims (each claim having its own scope) suffer from at least the same clear errors. Thus, it is respectfully requested that the rejections of claims 3-7, 12-14, 16-23, and 27 be likewise withdrawn.

Claims 8-11 were rejected under 35 U.S.C. 103(a) as being unpatentable over Barna in view of U.S. Patent No. 6,829,473 of Raman (“Raman”). Claims 8-11 depend from, and further limit, claim 1. At least some of the deficiencies of Barna with respect to claim 1 are discussed above. Raman does not remedy the above-identified deficiencies of Barna. Thus, the combination of Barna and Raman fails to disclose or suggest all of the elements of any of the presently pending claims.

Furthermore, it would not have been obvious to reverse the request-response of Barna such that the accounting server 18 would send a request to the access server PDSN 12, because there is no apparent reason why one of ordinary skill in the art would so modify Barna’s system. For this additional reason, Barna is insufficient to render any claim of the presently pending application unpatentable. The Office Action did not dispute this observation, which was previously presented in the response filed July 16, 2007. Thus, this observation should be taken as admitted.

Claims 24-25 were rejected under 35 U.S.C. 103(a) as being unpatentable over Barna in view of U.S. Patent No. 6,947,724 of Chaney (“Chaney”). Independent claim 24 has its own scope. Claim 24, however, recites at least some of the same features discussed above with regard to claim 1. Claim 25 depends from and further limits claim 24. Accordingly, at least

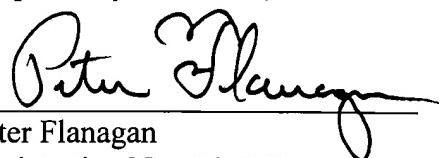
some of the deficiencies of Barna with respect to claims 24-25 are, in effect, discussed above. Chaney fails to remedy the above-identified deficiencies of Barna. Thus, the combination of Barna and Chaney fails to disclose or suggest all of the elements any of the presently pending claims. Furthermore, it would not have been obvious to modify Barna, as discussed above. Accordingly, it is respectfully requested that the rejection be withdrawn.

Claims 26 was rejected under 35 U.S.C. 103(a) as being unpatentable over Barna in view of Chaney, and further in view of Raman. Claim 26 depends from and further limits claim 24. At least some of the deficiencies of all the cited references with respect to claim 1 are discussed above, and the similarity between claim 24 and claim 1 is also noted above. Accordingly, it is respectfully requested that the rejection of claim 26 be withdrawn on the basis of the distinctions already noted above, and specifically because the combination of Barna, Chaney, and Raman fails to disclose or suggest all of the elements of any of the presently pending claims.

For the reasons explained above, it is respectfully submitted that each of claims 1, 3-14, and 16-28 recites subject matter that is neither disclosed nor suggested in the cited art. It is, therefore, respectfully requested that all of claims 1, 3-14, and 16-28 be allowed, and that this application be passed to issue.

Reconsideration and withdrawal of the rejections, in view of the clear errors in the Office Action, is respectfully requested. In the event this paper is not being timely filed, the applicants respectfully petition for an appropriate extension of time. Any fees for such an extension together with any additional fees may be charged to Counsel's Deposit Account 50-2222.

Respectfully submitted,


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